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28 **RICHARD LAMASCUS (DECEASED),**
ESTATE OF JAMES MERCER
(DECEASED), MARY ANN LAMASCUS,
BRIAN LAMASCUS, CRAIG LAMASCUS,
AND JOAN MERCER

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3

4 JAMES SHORTT,
5 Plaintiff,
6 vs.

7 COUNTY OF LOS ANGELES;
8 LOS ANGELES SHERIFF'S
9 DEPARTMENT; ESTATE OF
10 RICHARD LAMSCUS
11 (DECEASED); ESTATE OF
12 JAMES MERCER
13 (DECEASED), et al.,
14 Defendants.

CASE NO. 11-CV-05484 DSF (JCG)
Honorable Dale S. Fischer

STIPULATION AND ~~[PROPOSED]~~
PROTECTIVE ORDER

14
15 **I. PURPOSES AND LIMITATIONS**

16 Disclosure and discovery activity in this action are likely to involve
17 production of confidential, proprietary, or private information for which special
18 protection from public disclosure and from use for any purpose other than
19 prosecuting this litigation may be warranted.

20 Plaintiff claims that his civil rights were violated, resulting in his conviction
21 for murder in the early 1980's. The currently named defendants are the estates
22 and/or surviving family members of the two deceased Los Angeles County
23 Sheriff's Department ("LASD") Homicide Detectives, Richard Lamascus and
24 James Mercer, who were assigned to the underlying investigation, the County of
25 Los Angeles ("County") and the LASD. Plaintiff's claims against the District
26 Attorney's Office were dismissed by the Court.

27 To date, Plaintiff has propounded five sets of document production requests
28 on Defendants County of Los Angeles and LASD which include approximately

1 200 separate document production requests (many of which include additional sub-
2 categories of documents). Pursuant to Fed.R.Civ.P. Rule 26 and in response to the
3 five sets of documents production requests, Defendants County and LASD have
4 produced to Plaintiff over 8,000 bates numbers of documents and materials.
5 Defendants County and LASD maintain that many of the document production
6 requests seek privileged materials, including, but not limited to, various notes,
7 memoranda, communications and other documents containing attorneys' thoughts,
8 impressions and mental conclusions as well as various documents containing
9 confidential, private information about third party non-parties to the instant
10 litigation. Defendants have provided a privilege log identifying these materials. In
11 the interest of judicial economy, Defendants County and LASD have agreed to
12 produce a sub-set of the materials listed in the privilege log subject to protective
13 order.¹

14 Plaintiff through his counsel of record, and Defendants, through their
15 counsel of record, hereby stipulate that any production of Protected Materials shall
16 be produced subject to the terms of this Order. The parties acknowledge that this
17 Order does not confer blanket protections on all disclosures or responses to
18 discovery and that the protection it affords from public disclosure and use extends
19 only to the limited information or items that are entitled to confidential treatment
20 under the applicable legal principles. The parties further acknowledge, as set forth
21 in Section 12.3, below, that this Stipulated Protective Order does not entitle them
22 to file confidential information under seal; Civil Local Rule 79-5 and this Court's
23 Civil Case Standing Order set forth the procedures that must be followed and the
24

25 ¹ Some of the materials were inadvertently included in the prior production of over 8,000
26 bates numbers of documents and materials. Plaintiff has agreed that those shall be
27 subject to the instant Protective Order. To avoid any confusion, Defendants will re-
28 produce the subject documents with the "CONFIDENTIAL – SUBJECT TO
PROTECTIVE ORDER" stamp as required under paragraph (1) below.

standards that will be applied when a party seeks permission from the court to file material under seal.

II. 2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action.

2.7 House Counsel: attorneys who are employees of a party to this action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.8 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action but are retained to represent or advise a party to this action and

1 have appeared in this action on behalf of that party or are affiliated with a law firm
2 which has appeared on behalf of that party.

3 2.10 Party: any party to this action, including all of its officers, directors,
4 employees, consultants, retained experts, and Outside Counsel of Record (and their
5 support staffs).

6 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
7 Discovery Material in this action.

8 2.12 Professional Vendors: persons or entities that provide litigation
9 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
10 demonstrations, and organizing, storing, or retrieving data in any form or medium)
11 and their employees and subcontractors.

12 2.13 Protected Material: any Disclosure or Discovery Material that is
13 designated as "CONFIDENTIAL."

14 2.14 Receiving Party: a Party that receives Disclosure or Discovery
15 Material from a Producing Party.

16 **III. 3. SCOPE**

17 The protections conferred by this Stipulation and Order cover not only
18 Protected Material (as defined above), but also (1) any information copied or
19 extracted from Protected Material; (2) all copies, excerpts, summaries, or
20 compilations of Protected Material; and (3) any testimony, conversations, or
21 presentations by Parties or their Counsel that might reveal Protected Material.
22 However, the protections conferred by this Stipulation and Order do not cover the
23 following information: (a) any information that is in the public domain at the time
24 of disclosure to a Receiving Party or becomes part of the public domain after its
25 disclosure to a Receiving Party as a result of publication not involving a violation
26 of this Order, including becoming part of the public record through trial or
27 otherwise; and (b) any information known to the Receiving Party prior to the
28 disclosure or obtained by the Receiving Party after the disclosure from a source

1 who obtained the information lawfully and under no obligation of confidentiality to
 2 the Designating Party. Any use of Protected Material at trial shall be governed by a
 3 separate agreement or order.

4 **IV. 4. DURATION**

5 Even after final disposition of this litigation, the confidentiality obligations
 6 imposed by this Order shall remain in effect until a Designating Party agrees
 7 otherwise in writing or a court order otherwise directs. Final disposition shall be
 8 deemed to be the later of (1) dismissal of all claims and defenses in this action,
 9 with or without prejudice; and (2) final judgment herein after the completion and
 10 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
 11 including the time limits for filing any motions or applications for extension of
 12 time pursuant to applicable law.

13 **V. 5. DESIGNATING PROTECTED MATERIAL**

14
 15 5.1 Exercise of Restraint and Care in Designating Material for Protection.
 16 Each Party or Non-Party that designates information or items for protection under
 17 this Order must take care to limit any such designation to specific material that
 18 qualifies under the appropriate standards. The Designating Party must designate for
 19 protection only those parts of material, documents, items, or oral or written
 20 communications that qualify – so that other portions of the material, documents,
 21 items, or communications for which protection is not warranted are not swept
 22 unjustifiably within the ambit of this Order.

23 Mass, indiscriminate, or routinized designations are prohibited. Designations
 24 that are shown to be clearly unjustified or that have been made for an improper
 25 purpose (e.g., to unnecessarily encumber or retard the case development process or
 26 to impose unnecessary expenses and burdens on other parties) expose the
 27 Designating Party to sanctions.

1 If it comes to a Designating Party's attention that information or items that it
2 designated for protection do not qualify for protection, that Designating Party must
3 promptly notify all other Parties that it is withdrawing the mistaken designation.

4 5.2 Manner and Timing of Designations. Except as otherwise provided in
5 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
6 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
7 under this Order must be clearly so designated before the material is disclosed or
8 produced.

9 Designation in conformity with this Order requires:

10 (a) for information in documentary form (e.g., paper or electronic
11 documents, but excluding transcripts of depositions or other pretrial or trial
12 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to
13 each page that contains protected material. If only a portion or portions of the
14 material on a page qualifies for protection, the Producing Party also must clearly
15 identify the protected portion(s) (e.g., by making appropriate markings in the
16 margins).

17 A Party or Non-Party that makes original documents or materials available
18 for inspection need not designate them for protection until after the inspecting
19 Party has indicated which material it would like copied and produced. During the
20 inspection and before the designation, all of the material made available for
21 inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has
22 identified the documents it wants copied and produced, the Producing Party must
23 determine which documents, or portions thereof, qualify for protection under this
24 Order. Then, before producing the specified documents, the Producing Party must
25 affix the "CONFIDENTIAL" legend to each page that contains Protected Material.
26 If only a portion or portions of the material on a page qualifies for protection, the
27 Producing Party also must clearly identify the protected portion(s) (e.g., by making
28 appropriate markings in the margins).

1 (b) for testimony given in deposition or in other pretrial or trial proceedings,
 2 that the Designating Party identify on the record, before the close of the deposition,
 3 hearing, or other proceeding, all protected testimony.

4 (c) for information produced in some form other than documentary and for
 5 any other tangible items, that the Producing Party affix in a prominent place on the
 6 exterior of the container or containers in which the information or item is stored
 7 the legend "CONFIDENTIAL." If only a portion or portions of the information or
 8 item warrant protection, the Producing Party, to the extent practicable, shall
 9 identify the protected portion(s).

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
 11 failure to designate qualified information or items does not, standing alone, waive
 12 the Designating Party's right to secure protection under this Order for such
 13 material. Upon timely correction of a designation, the Receiving Party must make
 14 reasonable efforts to assure that the material is treated in accordance with the
 15 provisions of this Order.

16 **VI. 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

17
 18 6.1 Challenges. This Order shall be without prejudice to the right of the
 19 parties (i) to bring before the Court at any time the question of whether any
 20 particular document or information is confidential or whether its use should be
 21 restricted or (ii) to present a motion to the Court under FRCP 26(c) for a separate
 22 protective order as to any particular document or information, including
 23 restrictions differing from those as specified herein. This Order shall not be
 24 deemed to prejudice the parties in any way in any future application for
 25 modification of this Order.

26 6.2 Timing of Challenges. Any Party or Non-Party may challenge a
 27 designation of confidentiality at any time. Unless a prompt challenge to a
 28 Designating Party's confidentiality designation is necessary to avoid foreseeable,

1 substantial unfairness, unnecessary economic burdens, or a significant disruption
 2 or delay of the litigation, a Party does not waive its right to challenge a
 3 confidentiality designation by electing not to mount a challenge promptly after the
 4 original designation is disclosed.

5 6.3 Meet and Confer. The Challenging Party shall initiate the dispute
 6 resolution process by providing written notice of each designation it is challenging
 7 and describing the basis for each challenge. To avoid ambiguity as to whether a
 8 challenge has been made, the written notice must recite that the challenge to
 9 confidentiality is being made in accordance with this specific paragraph of the
 10 Protective Order. The parties shall attempt to resolve each challenge in good faith
 11 and must begin the process by conferring directly (in voice to voice dialogue; other
 12 forms of communication are not sufficient) within 14 days of the date of service of
 13 notice. In conferring, the Challenging Party must explain the basis for its belief that
 14 the confidentiality designation was not proper and must give the Designating Party
 15 an opportunity to review the designated material, to reconsider the circumstances,
 16 and, if no change in designation is offered, to explain the basis for the chosen
 17 designation. A Challenging Party may seek judicial intervention only if it has
 18 engaged in this meet and confer process first or establishes that the Designating
 19 Party is unwilling to participate in the meet and confer process in a timely manner.

20 **VII. 7. ACCESS TO AND USE OF PROTECTED MATERIAL**

21 7.1 Basic Principles. A Receiving Party may use Protected Material that is
 22 disclosed or produced by another Party or by a Non-Party in connection with this
 23 case only for prosecuting, defending, or attempting to settle this litigation. Such
 24 Protected Material may be disclosed only to the categories of persons and under
 25 the conditions described in this Order. When the litigation has been terminated, a
 26 Receiving Party must comply with the provisions of section 13 below (FINAL
 27 DISPOSITION).
 28

1 Protected Material must be stored and maintained by a Receiving Party at a
2 location and in a secure manner that ensures that access is limited to the persons
3 authorized under this Order.

4 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
5 otherwise ordered by the court or permitted in writing by the Designating Party, a
6 Receiving Party may disclose any information or item designated
7 "CONFIDENTIAL" only to:

8 (a) the Receiving Party's Outside Counsel of Record in this action, as
9 well as employees of said Outside Counsel of Record to whom it is reasonably
10 necessary to disclose the information for this litigation and who have signed the
11 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit
12 A;

13 (b) the officers, directors, and employees (including House Counsel) of the
14 Receiving Party to whom disclosure is reasonably necessary for this litigation and
15 who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

16 (c) Experts (as defined in this Order) of the Receiving Party to whom
17 disclosure is reasonably necessary for this litigation and who have signed the
18 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

19 (d) the court and its personnel;

20 (e) court reporters and their staff, professional jury or trial consultants,
21 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary
22 for this litigation and who have signed the "Acknowledgment and Agreement to
23 Be Bound" (Exhibit A);

24 (f) during their depositions, witnesses in the action to whom disclosure is
25 reasonably necessary and who have signed the "Acknowledgment and Agreement
26 to Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or
27 ordered by the court. Pages of transcribed deposition testimony or exhibits to
28

1 depositions that reveal Protected Material must be separately bound by the court
2 reporter and may not be disclosed to anyone except as permitted under this
3 Stipulated Protective Order.

4 (g) the author or recipient of a document containing the information or a
5 custodian or other person who otherwise possessed or knew the information.

6 **VIII. 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
7 **PRODUCED IN OTHER LITIGATION**

8 If a Party is served with a subpoena or a court order issued in other litigation
9 that compels disclosure of any information or items designated in this action as
10 “CONFIDENTIAL,” that Party must:

11 (a) promptly notify in writing the Designating Party. Such notification shall
12 include a copy of the subpoena or court order;

13 (b) promptly notify in writing the party who caused the subpoena or order to
14 issue in the other litigation that some or all of the material covered by the subpoena
15 or order is subject to this Protective Order. Such notification shall include a copy
16 of this Stipulated Protective Order; and

17 (c) cooperate with respect to all reasonable procedures sought to be pursued
18 by the Designating Party whose Protected Material may be affected.

19 If the Designating Party timely seeks a protective order, the Party served
20 with the subpoena or court order shall not produce any information designated in
21 this action as “CONFIDENTIAL” before a determination by the court from which
22 the subpoena or order issued, unless the Party has obtained the Designating Party’s
23 permission. The Designating Party shall bear the burden and expense of seeking
24 protection in that court of its confidential material – and nothing in these
25 provisions should be construed as authorizing or encouraging a Receiving Party in
26 this action to disobey a lawful directive from another court.
27
28

1 **IX. 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**
2 **PRODUCED IN THIS LITIGATION**

3 (a) The terms of this Order are applicable to information produced by a
4 Non-Party in this action and designated as "CONFIDENTIAL." Such information
5 produced by Non-Parties in connection with this litigation is protected by the
6 remedies and relief provided by this Order. Nothing in these provisions should be
7 construed as prohibiting a Non-Party from seeking additional protections.

8 (b) In the event that a Party is required, by a valid discovery request, to
9 produce a Non-Party's confidential information in its possession, and the Party is
10 subject to an agreement with the Non-Party not to produce the Non-Party's
11 confidential information, then the Party shall:

12 (1) promptly notify in writing the Requesting Party and the
13 Non-Party that some or all of the information requested is subject to a
14 confidentiality agreement with a Non-Party;

15 (2) promptly provide the Non-Party with a copy of the
16 Stipulated Protective Order in this litigation, the relevant discovery request(s), and
17 a reasonably specific description of the information requested; and

18 (3) make the information requested available for inspection
19 by the Non-Party.

20 (c) If the Non-Party fails to object or seek a protective order from this
21 court within 14 days of receiving the notice and accompanying information, the
22 Receiving Party may produce the Non-Party's confidential information responsive
23 to the discovery request. If the Non-Party timely seeks a protective order, the
24 Receiving Party shall not produce any information in its possession or control that
25 is subject to the confidentiality agreement with the Non-Party before a
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27
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determination by the court.² Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

X. 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

XI. 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or

² The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 work product protection, the parties may incorporate their agreement in the
2 stipulated protective order submitted to the court.

3 **XII. 12. MISCELLANEOUS**

4 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
5 person to seek its modification by the court in the future.

6 12.2 Right to Assert Other Objections. By stipulating to the entry of this
7 Protective Order no Party waives any right it otherwise would have to object to
8 disclosing or producing any information or item on any ground not addressed in
9 this Stipulated Protective Order. Similarly, no Party waives any right to object on
10 any ground to use in evidence of any of the material covered by this Protective
11 Order.

12 12.3 Filing Protected Material. Without written permission from the
13 Designating Party or a court order secured after appropriate notice to all interested
14 persons, a Party may not file in the public record in this action any Protected
15 Material. A Party that seeks to file under seal any Protected Material must comply
16 with Civil Local Rule 79-5.1 and this Court's Civil Case Standing Order. Protected
17 Material may only be filed under seal pursuant to a court order authorizing the
18 sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-
19 5 a sealing order will issue only upon a written application establishing that the
20 Protected Material at issue is entitled to protection under the law. If a Receiving
21 Party's request to file Protected Material under seal pursuant to Civil Local Rule
22 79-5.1 is denied by the court, then the Receiving Party may file the information in
23 the public record unless otherwise instructed by the court.

24 **XIII. 13. FINAL DISPOSITION**

25
26 Within 60 days after the final disposition of this action, as defined in
27 paragraph 4, each Receiving Party must return all Protected Material to the
28 Producing Party or destroy such material. As used in this subdivision, "all

Protected Material” includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: January 17, 2013

Respectfully Submitted,
LITT, ESTUAR, & KITSON LLP
LAW OFFICES OF GREGORY YATES

By /s/ Barrett S. Litt
Barrett S. Litt
Attorneys for Plaintiff

DATED: January __, 2013

LAWRENCE, BEACH, ALLEN &
CHOI, PC
By ___/s/_____
Michael D. Allen
Attorneys for County of Los Angeles and
Los Angeles Sheriff's Department

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DATED: January __, 2013

COLLINS COLLINS MUIR + STEWART LLP

By __/s/_____

Catherine M. Mathers
Attorneys for Defendants Estate of
Richard Lamascus, Estate of James
Mercer, Joan Mercer, Mary Ann
Lamascus, Brian Lamascus and
Craig Lamascus

DATED: January 29, 2013



Jay C. Gandhi, Magistrate Judge
United States District Court

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Stipulated Protective Order that
was issued by the United States District Court for the Central District of California
on [date] in the case of *Shortt v. County of Los Angeles, et al.*, case No. 11-CV-
05484 DSF (JCG).

I agree to comply with and to be bound by all the terms of this Stipulated
Protective Order and I understand and acknowledge that failure to so comply could
expose me to sanctions and punishment in the nature of contempt. I solemnly
promise that I will not disclose in any manner any information or item that is
subject to this Stipulated Protective Order to any person or entity except in strict
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District
Court for the Central District of California for the purpose of enforcing the terms
of this Stipulated Protective Order, even if such enforcement proceedings occur
after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and
telephone number] as my California agent for service of process in connection with
this action or any proceedings related to enforcement of this Stipulated Protective
Order.

Date: _____

City and State where sworn and signed: _____

1 Printed name: _____

2 [printed name]

3

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5 Signature: _____

6 [signature]

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